

AGRIBILT BUILDING SYSTEMS - STANDARD TERMS AND CONDITIONS

1. **Acceptance; Binding Contract; Non Cancellation.** AgriBilt Building Systems, is referred to herein as "Seller" and the person identified on the face of the Purchase Order purchasing the goods is referred to herein as "Buyer". This Purchase Order shall become a binding contract upon its acceptance in writing by Seller ("Contract"). Seller may accept the Purchase order by sending Buyer a countersigned copy of the purchase order face accepting the order with Seller's order number marked on it, by courier, mail, or facsimile or by sending an e-mail to Buyer after Buyer has signed the Purchase Order face confirming Seller's acceptance of the order, referencing the name of Buyer's customer identified on the purchase order face and the order number assigned by Seller to the order. Acceptance shall be deemed to have occurred and Buyer deemed to have received notification of Seller's acceptance, when Seller sends Buyer a countersigned copy of the Purchase Order or sends Buyer an e-mail confirmation of Seller's acceptance. After acceptance by Seller this Contract cannot be canceled by Buyer under any circumstance without Buyer first reaching an agreement in writing with Seller covering all of Seller's damages.

2. **Substitution and Modification of Design.** Unless specifically restricted on the face hereof, Seller has the right to modify or substitute for the design of the building or structure, so long as the new design continues to meet the specifications for wind and snow loads, exposures and nominal dimensions and in any such case Seller shall have no liability by reason of any such modification or substitution.

3. **Delivery.**

(A) **Delivery of Goods; Risk of Loss and Title.** Buyer, upon being notified that the goods are ready for shipment, shall receive and accept delivery of the goods within ten calendar (10) days of such notification. If the Buyer fails or refuses to accept delivery of the goods within said ten (10) day period, then Seller may, at its option, and without notice, treat this Contract as being Breached in which event the Seller shall have all remedies for Breach of this Contract, which remedies shall include charging the Buyer storage fees for storing the completed building or structure, as well as all of the remedies set forth in Section 5 below and at law. Unless otherwise specified all goods are shipments FOB the "Ship to Address" on the face of this Contract ("Delivery Destination"). Title of goods and all risk of loss shall pass to Buyer upon Seller's tender of delivery of the goods to Buyer at the Delivery Destination. Buyer shall bear risk of loss as soon as the truck bearing the building or structure or other goods arrives at the Delivery Destination and thus all risk of loss during unloading, including personal injury and any other liability is upon the Buyer. Buyer is solely responsible under all circumstances for unloading and for having the necessary equipment and labor to unload the goods from the delivery truck, including a forklift. All freight, transportation, delivery and handling charges, whether stated as a separate item on the face hereof or included in the building or structure cost, are estimates only that reflect current charges known to Seller at the time of acceptance of this order and are subject to re-costing at the time goods are ready for shipment. Buyer is responsible for all storage charges and for all demurrage and special shipping charges incurred by Seller if the job site cannot be safely accessed by an eighty (80) foot long semi-truck (including cab and flatbed). Seller shall not be responsible for spotting, switching, drayage, demurrage or other transportation charges unless agreed to in writing prior to delivery. Buyer may also specify and use a designated freight carrier, but in the absence of such specifications, goods will be shipped by the method and via the carrier chosen by Seller. Unless otherwise stated on the face hereof all goods are transported via "CONSOLIDATED OR COMMUNITY FREIGHT" and Buyer's goods will not be shipped alone via dedicated trucking, but will be shipped with those of Seller's other customers. If Buyer takes delivery at Seller's premises or the manufacturing facility or if Buyer specifies the carrier for shipment, then delivery shall be FOB Seller's premises or the manufacturing facility, as applicable. Notwithstanding the foregoing, title of goods under this Contract, shall, at Seller's sole option, revert to Seller if any payment by or for Buyer is not made in accordance with this Contract, if any check provided by or for Buyer is dishonored or is otherwise unable to be cashed by Seller or if any wire transfer or credit card charge or payment or any portion thereof made by or for Buyer to Seller is reversed or is not fully paid to Seller. If any payment hereunder is made by Buyer by credit card, Buyer by its signature on the face hereof authorizes Seller to charge the credit card for all amounts due to Seller hereunder.

(B) **Estimated Shipping and Delivery Dates.** Buyer agrees that any dates stated by Seller for shipment or delivery of drawings or of the goods shall be estimates only, may be subject to change by Seller without notice, and are based, among other things, on manufacturing and delivery schedules and Seller's prompt receipt from Buyer of all information and documents Seller needs to supply the goods ordered hereunder. Seller will use reasonable efforts to meet the indicated delivery date or delivery period but Seller is not responsible or liable for its failure(s) to do so. Seller shall not be liable to Buyer under any circumstances for damages of any kind or type whatsoever, including, without limitation, actual, direct, special, incidental, consequential, and indirect damages, which are caused by any delay(s) in Seller's shipment, delivery or performance hereunder without regard to the cause and Buyer specifically waives any and all claims for damages against Seller arising therefrom.

(C) **Partial Delivery.** Seller will attempt to make complete delivery, but Buyer agrees that the Seller may, in its discretion, make partial delivery of the building or structure and the COD amounts may be adjusted proportionally by shipment. Notwithstanding the preceding sentence, the full amount of the balance shown on the face hereof must be paid by Buyer at time the building or structure is delivered by the carrier to the Delivery Destination, even though accessory items obtained from third party vendors or manufacturers that are not components of the building or structure, may be separately delivered thereafter. Buyer specifically agrees that Seller is not responsible or liable for timeliness of delivery of accessory goods obtained from third party vendors and manufacturers that are not components of the building or structure purchased, including without limitation, overhead doors, sliding doors, roll up doors, man or walk doors, insulation, skylights, vents and windows (hereinafter "Special Products"), or for the suitability of such Special Products for any particular use. In connection with the delivery of the goods specified in this Contract, if Seller contacts Buyer to arrange for a delivery date and Buyer fails or refuses to accept Seller's designated delivery date or postpones or attempts to postpone Seller's designated delivery date by more than ten (10) calendar days, Seller, may, at its option: (i) treat such conduct as a Breach of this Contract, cancel the Contract and retain any deposit and payments made as partial payment of liquidated damages; or (ii) fulfill this Contract and charge to Buyer all additional costs, expenses and increases incurred by Seller after the date of Seller's acceptance of the purchase order ("Acceptance Date"), including without limitation, all additional labor, raw material and freight costs, expenses and charges and all price increases in the goods, relating to fabrication, procurement and/ or delivery of the building or structure ordered, or the components, parts, and materials ordered and/or the Special Products ordered at a later time, plus all loading, unloading and storage costs, expenses and charges incurred by Seller ("Increased Costs").

(D) **Damages and Losses in Delivery.** Seller shall not be responsible or liable for any shortages in or damages to or loss of goods caused by any third party delivery service (including a trucking company), whether or not such delivery service is hired by Seller, and in any such case any customer claim shall be solely made against such delivery service.

4. **Notice of Shortages and Shipment Damages.** All goods purchased by Buyer hereunder shall be deemed fully accepted by Buyer. All claims for shortages of bulk packages or bundles as compared to the bill of lading, shortages of arch panels as compared to the material development report, and for alleged damages or defects caused by shipment of the goods are waived unless any such claims are noted in writing on the driver's copy of the bill of lading upon delivery at the Delivery Destination and the bill of lading is marked and signed by the Buyer or its customer and returned to the driver. All claims for alleged damages to and shortages of goods within concealed containers (i.e. parts inside boxes or crates) shall be reported in writing delivered to Seller within thirty (30) days of the date of delivery at the Delivery Destination or the claims are waived. All claims for shortages of and damage to Special Products (other than overhead or service doors) shall be reported in writing delivered to Seller within ten (10) days of the delivery date or the claims for shortages and damages are waived. Overhead doors and service doors must be opened at the time of delivery and all shortages and damages noted on the bill of lading and the marked bill of lading given to the driver or claims for shortages and damages are waived. All claims for undelivered Special Products must be reported in writing delivered to Seller within thirty (30) days of the date of delivery of the building or structure or the claims are waived. All written notices shall state with particularity each and every alleged damage, defect, shortage and/or undelivered good or Special Product claimed by Buyer.

5. **Breach and Damages.**

(A) Buyer agrees that in the event Buyer attempts to rescind or cancel this Contract or in the case of a breach, repudiation or default by Buyer hereof (collectively, "Breach"), Seller's full damages will be difficult to measure and, therefore, that Seller is entitled to have and recover the following liquidated damages from Buyer: (i) 60% of the Total Purchase Price, as adjusted hereunder, if Buyer's Breach occurs prior to the time a building or structure is manufactured; (ii) 100% of the Total Purchase Price, as adjusted hereunder, plus all procurement charges, handling and storage costs, if Buyer's Breach occurs after manufacture of the building or structure commences; and (iii) 100% of the Total Purchase Price plus all shipping, return freight, procurement charges, handling and storage costs, if Buyer's Breach is with respect to an order for a specially or custom manufactured building or structure, any Special Products or any other custom ordered or procured goods (hereinafter collectively referred to as a "Special Order"), regardless whether the Breach occurs prior to or after manufacture or shipment. A Breach entitling Seller to the liquidated damages provided herein includes, but is not limited to, Buyer's failure or refusal to cooperate with Seller in the scheduling of delivery of goods; failure or refusal to accept Seller's scheduled delivery date; placing the order on hold for more than ten (10) days; failure to make any payment when due and in the manner required hereunder; attempted, threatened or actual cancellation or rescission of this Contract; anticipatory repudiation or repudiation of this Contract; and any other event, act or omission stated herein to constitute a Breach. If the Seller has incurred additional costs, charges, expenses or increases (including price increases) after the Buyer has caused a delay, including, without limitation, all Increased Costs, this Contract will be deemed to have been amended to include all such additional costs, expenses, charges and increases after the Acceptance Date and the Buyer's obligation hereunder will be increased on account thereof. Buyer agrees that the amount of liquidated damages specified herein is not a penalty and constitutes an actual good faith reasonable estimate of the actual damages that Seller would be expected to incur upon a Breach by Buyer. The foregoing liquidated damages are in addition to and not in lieu of damages recoverable under Section 5(B).

(B) Buyer is also liable to Seller for all damages Seller incurs due to a delay caused by Buyer or its agents or representatives, including incidental and consequential damages. Examples of delays, include without limitation, Buyer's: (i) notification to Seller to place the order on "hold" until further notice from Buyer; and (ii) failure or refusal to accept Seller's designated delivery date or period. If there is a delay caused by Buyer or its agents or representatives, Seller may then charge Buyer whatever costs or damages Seller incurs by reason of the delay, which are in addition to the damages recoverable under Section 5(A).

6. **Additional Assurances.** Deposits received by Seller are offered in good faith performance of contractual obligations, for Seller's expenses, and as a security deposit in the event of Buyer's Breach. Notwithstanding any other provision to the contrary herein if: (a) Seller becomes insecure about Buyer's willingness, intent, or ability to perform Buyer's financial or other obligations hereunder; (b) this Contract is for a Special Order; or (c) Seller deems Buyer's credit to be impaired, then Seller may demand Buyer's payment of up to the Total Purchase Price, as may be adjusted hereunder or pursuant to addendums and Change Orders signed by Buyer and Seller, storage fees and payment of all Increased Costs and all other costs, expenses and increases incurred by Seller, prior to Seller's delivery of any ordered goods. In addition to, or as part of, Seller's other remedies specified herein, upon Buyer's Breach, Seller may retain on its own account all payments paid by Buyer, and such retention shall not impair any other remedies available to Seller under this Contract or at law or equity. Buyer's failure to make payment demanded by Seller within five (5) days of receipt of Seller's demand shall constitute a Breach.

7. **No Rejection, Revocation or Setoff.** Any dispute about the quality, condition or workmanship of the goods or otherwise in connection with the terms of this Contract shall not entitle Buyer to reject or revoke acceptance of the goods. In the case of any dispute, Buyer shall take delivery of the goods, pay for the same without set-off against or reduction in any amount payable hereunder and for claims not waived under Section 4, hereof, (a) make a claim under the Seller's Limited Warranty set forth herein for goods covered under Seller's Limited Warranty, or (b) in the case of Excluded Goods deliver a claim to Seller for submission by Seller to the third party under the applicable Third Party's Warranty as provided in Section 12, below. Buyer's sole and exclusive remedy against Seller in lieu of all other remedies available to Buyer shall be pursuant to this Section and Sections 8, 9, 10 11 and 12 below, subject to the limitations on liability and damages of Section 13 hereof.

8. **Exclusive Remedy and Damages.** The sole and exclusive remedy and damages of Buyer for claims for damages to goods occurring during delivery, claims for shortages in components, parts and materials of the building or structure or other goods, claims for or arising from defects or non conformities in materials or workmanship in the goods and claims arising from or claims for failures caused by faulty, substandard or defective materials or workmanship in the goods, not waived under Section 4, above, shall at Seller's sole election, be limited to one of the following: (1) Seller's furnishing of replacement components, parts or materials for goods other than Excluded Goods, but not the: (a) dismantling, disassembly or removal of original materially defective, materially non-conforming, faulty or substandard components, parts or materials or

the installation of replacement components, parts or materials or the removal or reinstallation of any equipment or machinery, (b) removal, disabling or uncovering of Buyer's or any third party's work or any installed, attached or connected machinery or equipment or the replacement, restoration, reinstallation or reconnection of any such work, machinery or equipment, or (c) payment of any labor charges or other costs incurred in connection therewith; or (2) Seller's repair of materially defective, material non-conforming, faulty or substandard goods other than Excluded Goods, which does not include the removal, disabling, uncovering, restoration, reinstallation or reconnection of Buyer's or any third party's work or any installed or connected machinery or equipment in order to effectuate the repair and Seller shall only be liable for repairs that are authorized in writing by Seller prior to the repair; or (3) Seller's provision of a credit to the Buyer in an amount based on Seller's determination of Seller's cost of replacing shorted goods, goods damaged during delivery, or materially defective, material non-conforming, faulty or substandard goods, other than Excluded Goods; or (4) in the case of Excluded Goods, Seller's submission of a claim on Buyer's behalf under the Third Party Warranty covering Excluded Goods in accordance with Section 12, below, and Buyer's sole remedy and damages shall that set forth in the applicable Third Party Warranty. Buyer's remedies hereunder shall be in lieu of all other remedies available to Buyer at law or equity. Buyer hereby waives, releases, and renounces all other rights, claims and remedies against Seller not expressly provided for in this Contract. Buyer agrees to defend, indemnify and to hold Seller harmless from any and all losses, costs, claims, suits, damages and attorneys' fees arising from any alleged or real injury (including personal injury) to any person or property that arises out of work performed or materials or goods supplied hereunder or any other claim or suit arising out of this Contract.

9. **Limited Warranty.** Subject to the terms, conditions, limitations and exclusions contained herein, Seller warrants the building or structure purchased by Buyer for period of one (1) year from the date of original shipment from the manufacturing facility ("One Year Period") against material defects and material non-conformities in materials and workmanship and from failures caused by faulty, substandard or defective materials or workmanship, including failures to meet the snow or wind loads set forth in this Contract, provided that the building or structure has been sold as a fully enclosed pre-engineered steel building package, with endwalls for both ends of the building or structure, the endwalls are installed in both ends and the building as erected is fully enclosed ("Limited Warranty"). Seller's Limited Warranty is not assignable and any assignment or attempted assignment is void.

9.1. EXCLUSIONS AND LIMITATIONS.

(A) Seller's Limited Warranty does not cover defects or damage caused by: earthquakes, tornadoes, hurricanes, tempests, flooding, lightning, or other acts of god (including excessive wind loads, snow loads, live load, or seismic forces, conditions or coefficients); falling objects; accidents; aggressive atmosphere conditions (including but not limited to salt water, acid rain, corrosive chemicals, fumes, ash or animal waste); long term effects of the environment or changes in weather; salt spray from roads or vehicles; moisture entrapped in stored bundled components; improper storage of the building or structure or components thereof, including storage of sheathing that allows water, moisture, chemicals or other substances to be between sheathing or to cover or remain on panels or sheeting; faulty or improper erection or installation procedures or techniques; storage of bundled components in conditions of humidity, high heat, or extreme cold; defects or failure of the foundation; scraping walking or jumping on roof or on top of the building or structure; bumping, scraping, ramming or otherwise abusing arches or endwalls; placing, imposing or hanging of any weight in excess of designed conditions and loads for the building or structure, including collateral or auxiliary loads; any signs structures, vents, stacks, gutters, flashing, skylights, windows, or machinery installed on or in the building or structure by any person; any damage to the building or structure by crafts, including but not limited to contractors and subcontractors directly or indirectly retained by or for Buyer or its customer; loading conditions or seismic forces or conditions in excess of those specified for the building or structure; unauthorized modifications or improper techniques made by Buyer or any third person to any component of the building or structure; failure to maintain the building or structure, including failure to remove accumulations of ice and/or snow; product misuse, abuse or neglect; normal wear and tear or damage, regardless of cause; and any defect or damage caused or contributed by Buyer or third parties, including erectors, installers, carriers and Buyer's customer. Components of the building or structure are intended to be erected upon delivery and not to be stored in order to prevent deterioration. Seller's Limited Warranty excludes all damage and deterioration to components of the building or structure resulting from exposure to the elements and surrounding environment, including humidity, rainfall, standing water, high heat and extreme cold, if erection of the building or structure does not commence within thirty (30) days of the delivery date and continue thereafter. Seller's Limited Warranty is void and no longer in effect if: (i) the building or structure or other goods purchased from Seller are moved from or are not erected at the erection site for the building or structure shown on face of this Contract; (ii) the building or structure purchased is used for the storage of grain, gravel, sand or other aggregates and the face of this Contract does not clearly indicate such use for the building or structure; (iii) the building or structure or any components thereof are re-sold or ownership is transferred to a third party by Buyer; (iv) the building or structure or any components or parts thereof supplied by Seller are modified by any person or any materials, parts or components supplied by any third party are substituted for those supplied by Seller, without Seller's prior written consent; (v) The building or structure purchased does not include Seller supplied endwalls for both ends of the building, Buyer fails to install Seller supplied endwalls at both ends or otherwise fails to fully enclose the building with components or materials supplied by Seller; (vi) Buyer, its customer, any contractor or any other third party fails to follow the specifications and instructions contained in the construction drawings and erection manuals and guides supplied to Buyer in erection of the building or structure, including failure to install grouting when a trough and u-channel foundation is used and the failure to bolt the building or structure to a base plate when a base plate is used. Specific notes and details shown on construction drawings take precedence over building erection manuals and guides supplied. Seller does not warrant that the live load, snow load, wind load, collateral load, auxiliary load or seismic forces or coefficient for the building or structure will meet or comply with any Building Laws or any particular purpose or use Buyer has for the building or structure. Under Seller's limited warranty Seller only warrants the building or structure Seller supplies as a pre-engineered steel building package from failures caused by faulty, standard or defective materials or workmanship, including failures to meet the snow or wind loads set forth in this Contract. There is no warranty on the building or structure for weather tightness or against water or air infiltration from the side or roof wall panels or any other components of the building or structure or for weather tightness in any regard or respect. Unless specifically stated in a separate addendum to this Contract executed by Buyer and Seller, Seller makes no covenants, representations or warranties as to whether the building or structure or any components or materials thereof are eligible or will meet applicable criteria for points for [®] certification. Building components that are not purchased as a fully enclosed pre-engineered steel building package with Seller supplied endwalls (e.g. a component order shown of the face hereof) are excluded from Seller's Limited Warranty and no warranty is provided on any such components. Buyer is solely responsible for ordering a building or structure or building components that are fit for whatever purpose Buyer may have for the building or structure or the components that Buyer is ordering. Additional disclaimers by Seller are contained in Section 10, below.

(B) All doors, vents, windows, window frames, skylights, caulking, insulation, equipment and other Special Products, bolts, fasteners, paint on roof, walls and endwall panels of the building or structure ("Building Panels") and on all other components of the building or structure, Galvalume coating on Building Panels and Galvalume coated steel ("Excluded Goods") are not warranted by Seller and are warranted solely and to the extent provided by the steel mill(s), coating applicator(s), manufacturer(s) and vendor(s) of the Excluded Goods under, and subject to the terms, conditions, limitations and exclusions of, their respective warranties, including restrictions on transfer and assignment ("Third Party Warranty" or Third Party Warranties). Seller does not provide any warranty on Excluded Goods. Galvalume AZ55 coated steel used in the manufacture of the building or structure and Galvalume AZ55 Building Panels are not warranted by Seller, but are warranted by the steel mill manufacturing the Galvalume AZ55 coated steel for a period of twenty-five years against rust perforation, under and subject to the terms, conditions and limitations of its Third Party Warranty. The steel mill's Third Party Warranty against rust perforation for Building Panels is only valid for Seller supplied unpainted Building Panels with AZ55 Galvalume coating and Seller supplied Building Panels painted by an approved third party coating applicator with AZ55 Galvalume substrate. Paint on siliconized polyester paint on Building Panels is not warranted by Seller but is only warranted by the paint manufacturer for 40 years against peeling, flaking or otherwise loss of adhesion, pursuant and subject to the terms, conditions and limitations of its Third Party Warranty. There is no rust proof or rust perforation warranty for any galvanized coated products.

10. **WARRANTY DISCLAIMER.** THE LIMITED WARRANTY GIVEN BY SELLER HEREIN IS GIVEN EXPRESSLY AND IN PLACE OF ANY AND ALL OTHER EXPRESSED OR IMPLIED WARRANTIES INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARE HEREBY DISCLAIMED BY SELLER.

11. **Time to Report and Initiate Claims.** All claims under Seller's Limited Warranty must be in writing and made or initiated during the One Year Period. Written notice of all warranty claims shall also be given during the One Year Period to Seller's General Manager at: AgriBilt Building Systems 5992 Steubenville Pike, Suite 205 McKees Rocks, PA 15136. The written notice shall state with particularity each and every alleged claim and alleged defect, non-conformity, failure, fault and substandard being asserted. All warranty claims not made or initiated or for which written notice has not been given during the One Year Period are waived and barred and Buyer shall have no remedy on account of any such claim. Seller shall have no obligation under Seller's Limited Warranty unless and until Seller has been paid the full amount of the Total Purchase Price set forth in the Contract, including subsequent purchases related to the goods purchased under this contract. Buyer's failure to pay the Total Purchase Price when and as due under the Contract will not extend or toll the running of the One Year Period. Seller's repair or replacement hereunder does not extend the One Year Period. Buyer shall cooperate with Seller in investigating warranty claims. Buyer shall give or obtain for Seller access to the building or structure and other goods to inspect and take samples photographs and video of the building or structure, components thereof, other goods and site conditions.

12. **Claims under third Party Warranties.** Except as otherwise prohibited by restrictions on transfer and assignment or otherwise under the terms of a Third Party Warranty, Seller hereby assigns, transfers and passes through to Buyer any available Third Party Warranty given by steel mills, coating applicators, manufacturers and vendors on Excluded Goods, subject to all terms, conditions, limitations and exclusions of their respective warranties. Seller makes no representation or covenant as to whether or the extent to which any Third Party Warranty may be passed through, assigned, or transferred to Buyer. For claims not waived under Section 4, hereof, Seller will submit a warranty claim on Buyer's behalf under Third Party Warranties covering Excluded Goods subject to the terms and conditions and limitations thereof, upon Buyer's delivery of a written warranty claim to Seller within the time required under and in accordance with the applicable Third Party Warranty, but in no event less than ten (10) business days prior to the date of expiration of the Third Party Warranty. Buyer is solely responsible for ascertaining the time for the submission of a claim under a Third Party Warranty and the requirements for submission of a claim thereunder. Seller's obligations hereunder with respect to Excluded Goods are fulfilled when Seller submits a warranty claim on behalf of Buyer in accordance with this Section 12. The terms of a Third Party Warranty are subject to change and Seller is not responsible for any changes that occur in a Third Party Warranty. Copies of Third Party Warranties are available upon written request to Seller.

13. **Limitations on Liability.**

- (A) Seller shall not under any circumstances or event be liable under this Contract or at law to Buyer or to any third person for,
 - (1) any incidental, consequential, special, punitive, or indirect damages whatsoever, or
 - (2) any personal injury (including mental or emotional) or death to any person or damages by reason thereof, or
 - (3) any property damages or destruction of any kind whatsoever or damages by reason thereof,

including, but not limited to, costs, loss of profits, loss of revenue, loss of use, down time, loss of goodwill and damages or sums paid by Buyer to any third party, in conjunction with or which arise out performance or failure to perform any obligation contained in this Contract, out of negligence in the course of such performance, out of breach of this Contract, or otherwise resulting in any manner from the furnishing or use of the goods, or any replacement materials, components, parts or goods supplied or repairs performed, including the materials, workmanship, design, manufacture, use or performance of the goods or any claimed failures of or defects, faults, deficiencies or non-conformities in the goods or materials thereof or in workmanship of the goods, regardless whether the claim for damages is based in contract, tort (including negligence), strict

AGRIBILT BUILDING SYSTEMS - STANDARD TERMS AND CONDITIONS

liability, contribution, indemnification or any other theory or basis for recovery. Seller shall not under any circumstances be liable for any loss, claim, expense, or damage to the extent directly or indirectly caused by, contributed to, or arising out of the acts or omissions of Buyer, anyone acting directly or indirectly for or on Buyer's behalf or any third party (including without limitation erectors, contractors or carriers or Buyer's customer), whether by negligence, failure to maintain the building or structure or otherwise.

(B) Consequential damages shall mean and include without limitation of the general statement appearing above, in each case whether arising in tort or in contract and including in each case negligence: (1) loss of profits or revenue; (2) loss of use; (3) rental costs or expenses; (4) loss of contracts; (5) loss of business; (6) loss of financing; (7) loss of capital; (8) loss of orders; (9) loss of goodwill; (10) downtime; (11) loss of the steel building or structure or other goods supplied; (12) loss of or cost of replacing lost or damaged goods or equipment, including goods, inventory or equipment affixed to the building or structure, stored within or located inside of the building or structure; (13) loss of or the cost of replacing lost or damaged improvements made to or within the building or structure, such as but not limited to electrical, plumbing, fixtures, HVAC, drywall and flooring; (14) loss by reason of any delay attributable to Seller or its agents, representatives or subcontractors; (15) loss of data and information; (16) down time; and (17) any damages or sums paid by Buyer to any third party.

(C) Buyer agrees that under no circumstances shall Seller's liability to Buyer exceed in the aggregate, the Total Purchase Price for this Contract, for any claims, demands, causes of action, damages, liabilities, judgments, costs and expenses, including attorneys' fees and other costs of defense, arising out of or resulting from Seller's furnishing of the goods, Buyer's purchase and/or Buyer's and/or any third party's use of any products or services supplied pursuant to this Contract, Seller's performance under this Contract, or any terms, conditions, rights or obligations arising under or in connection with this Contract.

14. **Zoning, Building Codes and Building Requirements.** Buyer is solely responsible for investigating and ascertaining all zoning ordinances, by-laws, rules and regulations and all health, safety, fire and other building codes and building permit requirements applicable in and to the area or territory where the building or structure is to be erected ("Building Laws") in order to satisfy himself/itself that the building or structure complies with and conforms to all Building Laws. All specifications for the building or structure (including, without limitation, wind and snow loads, exposures, dimensions, size and location of door openings, coating on Building Panels and paint color on Building Panels, trim and curved angles and specifications for all components and accessories) and for Special Products have been designated by Buyer and provided to Seller based on Buyer's own due diligence, judgment and determination concerning Buyer's erection location, use and occupancy requirements and the requirements necessary for the building or structure and for Special Products to comply with all applicable Building Laws and Buyer's requirements. The building or structure purchased hereunder is suitable only for the erection location shown on the face hereof. Buyer is solely responsible for making all payments to obtain and for obtaining all required building permits and for any other required approval or authorization needed to erect the building or structure. Seller shall not be liable for any damages or losses, of any kind or nature, whether actual, incidental, special, punitive, consequential, direct or indirect, sustained by the failure of the building or structure or any Special Product to comply with any Building Laws or Buyer's particular requirements. Seller shall not be liable to Buyer for Buyer's costs and fees of any nature whatsoever incurred in designing, manufacturing or installing any building slabs, foundations and/or footings or otherwise incurred by Buyer in connection with construction of the building or structure.

15. **Design of Building.** Structural design of the building or structure ordered is based on the interaction of all Seller supplied component parts. Failure to make adequate provision for excessive stresses or instability occurring from whatever cause during construction shall be the sole risk of the Buyer. Seller makes no representation as to the adequacy of the wind or snow loads or exposures ordered and specified by Buyer. Buyer is solely responsible for ascertaining that the loads and factors Buyer has specified in this Contract for the building or structure are adequate for the intended location, use and occupancy of the building or structure and that no loads other than those specified shall be imposed on the building or structure. If this Contract is for parts or less than a complete, fully enclosed structure, Buyer assumes all responsibility for the strength, structural integrity, and capacity of the structure unless the manufacturer certifies same in writing. Buyer is solely responsible for designing from the components offered for sale by the Seller, a building or structure that will fit Buyer's particular needs and for providing Seller with the specifications therefore. Seller shall not be liable for design deficiencies set forth in specifications or drawings provided by Buyer or any other party, and correction of same shall be at Buyer's expense. Buyer agrees that the materials, goods and specifications described herein are in all respects the materials, goods and specifications required by Buyer and Buyer accepts sole responsibility for correcting any nonconformity between the materials, goods and specifications appearing in this Contract and Change Orders thereto and the materials, goods and specifications required by Buyer.

16. **No Responsibility or Liability for Construction; Indemnification.** This Contract is only for the purchase of goods from Seller and does not include erection, construction or installation by Seller of the building or structure or any of the components or goods ordered by Buyer or the provision by Seller of any services relating to or in connection with the erection, construction or installation of any goods ordered hereunder. Buyer and Seller hereby agree that Seller has no responsibility or liability whatsoever to Buyer for any damage or loss sustained or incurred by Buyer in connection with the erection, construction or installation of the building, structure, components or any other goods that are the subject of this Contract, even if Buyer utilizes the services of an entity or person whose name is provided by Seller to perform work or services relating to the erection, construction or installation of the building, structure, components or other goods. Buyer hereby releases Seller from all claims, damages, losses, costs, expenses and liabilities of every kind and nature arising out of the erection, construction, or installation of the building or structure, or other goods whether such work is done by Buyer or a third party. Buyer, its customer or any other person erecting the building or structure must follow and comply with the specifications and instructions contained in the construction drawings and the manuals and guides supplied to Buyer, including but not limited to erection manuals and guides. Specific notes and details shown on drawings take precedence over the erection manual(s) and guides supplied. With the sole exception of those claims expressly permitted to Buyer against Seller set forth in this Contract, Buyer agrees to defend, indemnify and hold Seller harmless from any and all losses, costs, expenses, claims, suits, demands, damages and liabilities, including attorney's fees, arising from or in connection with any alleged or real injury, damage or destruction, including injury to any person or damage or destruction to property, incurred or asserted in connection with or as a result of work performed or materials, components, parts or goods supplied by Seller hereunder or any work performed by or for Buyer or its customer in connection with the erection, construction or installation of the building or structure, components or goods purchased, or any other claim or suit arising out of this Contract. Buyer's duty to defend, indemnify and hold Seller harmless, includes, but is not limited to, any such losses, costs, claims, suits, damages and attorneys' fees arising from or incurred in connection with Seller's performance hereunder, any actual or alleged default by Seller hereunder, any actual or alleged Breach or default by Buyer hereunder, any actual or alleged breach of Seller's obligations hereunder or any actual or alleged negligence, act or omission on the part of Seller, Buyer or any third party acting on Buyer's behalf.

17. **Soil Conditions; Field Cutting.** It is the sole responsibility of Buyer to assure that soil and subsoil conditions at the construction site (erection location) are of sufficient density and have a sufficient soil bearing capacity to support and sustain the weight and loads of the foundations for the building or structure, the building or structure itself, loads for the building or structure and any equipment, machinery and materials to be stored or used therein. Buyer understands that metal components are not machine precision manufactured and that some field cutting, drilling, or welding might be necessary for construction. Buyer accepts responsibility for making minor field adjustments.

18. **Size and Dimension.** Except when specifically indicated, all dimensions are nominal exterior dimensions. Building size and all other dimensions are approximate and intended to identify standard sizes sold by the Seller. No warranty or representation is given by the Seller as to exact dimension, as the same will vary depending upon the placement of the concrete building base and other factors. Identification of steel gauge is subject to permissible steel producer industry thickness variations.

19. **Maintenance.** Roof and wall panels should remain free of any foreign substances and should be cleaned on a regular basis to prevent staining or discoloration of panel finishes. Buyer shall take and shall require its customer to take precautions to properly maintain the building or structure once erected to ensure that no damage is caused by the accumulations of snow or ice, including removal of snow and ice from the roof panels and side and end panels.

20. **Taxes.** Buyer shall pay all applicable sales, excise, ad valorem, use and occupancy taxes on the purchase price and goods purchased: it is expressly understood that if the rate of any applicable taxes is changed by the taxing authorities, Buyer shall pay in full the taxes set forth by those authorities. Buyer shall promptly pay the amount of such taxes to Seller upon demand regardless of whether the Contract is considered to be in interstate or intrastate commerce.

21. **Delays by Buyer.** If for any reason Buyer delays or postpones Buyer's or Seller's performance, including without limitation, delays in the manufacture, procurement or delivery of the building or structure or Special Products, the order shall be subject to re-costing to include the Increased Costs that occur or are incurred after the Acceptance Date. Buyer specifically acknowledges and agrees that it shall pay Seller all Increased costs as a part of this Contract when such Increased Costs are confirmed in writing by Seller and the Total Purchase Price for the order shall be deemed increased by the amount of all Increased Costs. Without limiting or waiving the remedies or rights available to Seller under Section 3(A) or (3)(C) hereof or any other provision of this Contract, if Buyer does not, within, seven (7) days of receipt of notice from Seller accept the delivery of the building or structure or the other goods ordered hereunder on the delivery date or during the delivery period scheduled by Seller, (i) any future delivery date requested by Buyer shall be subject to Seller's schedule at the time of request by Buyer (and Seller may therefore need to postpone delivery from Buyer's desired rescheduled date), and (ii) after such future delivery date is rescheduled by Seller, Seller may notify Buyer of any Increased Costs that are due to the Buyer's delay or postponement of its or Seller's performance and Buyer agrees that it shall pay Seller all Increased Costs upon demand. Buyer specifically acknowledges and agrees that Seller will not under any circumstances ship or deliver the building or structure or any ordered goods to Buyer until all Increased Costs and other increases, amounts, costs, and charges due to Seller, whether by reason of re-costing, Buyer's delay, Change Orders, changes to drawings, or increases due under any provision of this Contract, are first paid in full by Buyer to Seller in advance of shipment, such that the only amount to be due and payable COD upon delivery of the building or structure ordered hereunder is the original COD balance due on delivery set forth on the face of this Contract. Failure by Buyer to pay Increased Costs and all other increases, amounts, costs and charges described in this Section 21 shall be a Breach by Buyer of this Contract entitling Seller to the damages and remedies described in Sections 5 and 6 above, respectively.

22. **Provision of Names.** Upon request, Seller may supply the name(s) of manufacturers, vendors, contractors, erectors, architects, engineers and consultants to supply materials, components or goods or to perform work relating to the erection, construction or installation of the building or structure or other goods. Seller has not investigated such persons and the provision of name(s) does not constitute a recommendation of their skill or competence. It is important that Buyer conduct its own due diligence concerning such persons. Buyer agrees that it will rely solely on its own investigation and conduct its own due diligence when selecting a manufacturer, vendor, contractor, erector, engineer, architect or consultant. Buyer acknowledges and agrees that Seller is not an agent, employee, or representative of and is not responsible or liable for the acts or omissions of manufacturers, vendors, contractors, erectors, engineers, architects or consultants.

23. **Security Interest.** To secure payment and performance by Buyer of its obligations set forth in this Contract, Buyer hereby grants to Seller a security interest in all Buyer's rights in the following (collectively, the "Collateral"): (a) the pre-engineered and pre-manufactured steel building(s) or structure(s) and components thereof that are the subject of this Contract (the "Building(s)"), which in the case of: (i) trussless pre-engineered steel buildings are comprised of arches, endwalls, base plates and connectors, door frames, caulking, doors and related frames, hardware and accessories, including skylights, windows and frames, bolt caps, vents and insulation; and (ii) pre-engineered steel buildings with trusses are comprised of arches, endwalls, base plates and connectors, interior structural components and related hardware, door frames, caulking, doors and related frames, hardware and accessories, including skylights, windows and frames, bolt caps, vents and insulation; (b) payments, rights to payment and other rights under contracts pursuant to

AGRIBILT BUILDING SYSTEMS - STANDARD TERMS AND CONDITIONS

which Buyer is selling the Building(s) to, or installing the Building(s) for, third parties, and (c) all other proceeds of the foregoing. Upon any default in payment or performance of any such obligations, Seller may declare all Buyer's obligations under this Contract immediately due and payable and shall have the remedies of a secured party as provided by law. Seller is hereby authorized to file financing statements covering the Collateral and such other documents as may be needed to create, perfect or maintain a security interest in the Collateral in any jurisdiction where the Collateral may be located. Buyer will hereafter execute such instruments and perform such acts as Seller may request to establish and maintain a valid and perfected security interest in the Collateral wherever located. Buyer hereby authorizes Seller to take such acts and to execute such documents Seller's and/or Buyer's name as may be necessary for Seller to create, perfect or maintain a security interest in the Collateral.

24. **Force Majeure.** Seller shall not under any circumstances be liable to Buyer or to any third party for damages or otherwise for any delay, default, or failure in performance by Seller hereunder, if such delay, default or failure is due to causes or conditions beyond Seller's control, including without limitation, acts of God; acts of Buyer; acts of civil or military authority; government actions, regulations or restrictions, including but not limited to preference allocation or priority systems for government or other orders; judicial orders; fires; strikes or other labor disturbances; floods; earthquakes; disasters; epidemics, wars; terrorism; riots; disturbances; car or transportation shortages; delays in transportation; breakdown of transportation vehicles; accidents; and inability to obtain the necessary labor, materials, components or manufacturing facilities; manufacturer, vendor or supplier delays; breakdown of manufacturing equipment; and any other or any other event, contingency, matter, or thing, wherever occurring and whether similar or dissimilar to any of the foregoing, not within Seller's control ("Force Majeure").

25. **Jurisdiction and Venue.** Buyer and Seller agree that this Contract has been consummated in Allegheny County, Pennsylvania. It is further agreed that in the event of litigation instituted by any party arising from or relating to this Contract any legal action must be maintained in the courts of Allegheny County, Pennsylvania ("Courts"). Buyer specifically consents to the exercise of personal jurisdiction over Buyer by the Courts for the purposes of enforcing this Contract and disputes and claims arising under or relating to this Contract and Buyer waives any objection to venue with respect to any action filed in such location. **Buyer and Seller knowingly and intentionally waive any right to trial by jury in regard to disputes or claims arising out of, in connection with or relating to this Contract, including its enforcement.** In the event that Buyer defaults or breaches any of the terms or conditions of this Contract and Seller utilizes an attorney to enforce or defend any of the provisions of the Contract, Buyer shall pay to Seller, Seller's attorneys' fees and costs to the maximum extent allowed by law.

26. **Miscellaneous.** This Contract, consisting of the face of the purchase order, the terms and conditions on the face and these Standard Terms and Conditions, is the final, complete, exclusive and fully integrated record of the agreement between Seller and Buyer concerning the subject matter hereof and supersedes all prior and contemporaneous understandings or agreements of Buyer and Seller. All changes, alterations, modifications or amendments to the provisions of this Contract shall be in writing and signed by Buyer and an officer of Seller, except for Change Orders pertaining to a change to the specifications for the goods, including an addition or deletion to the goods, and/or the Total Purchase Price, which may be executed by Seller's General Manager or other authorized representative of Seller. Buyer has not relied on any statements or representations of any party (including without limitation any of Seller's representatives) that alters, adds to or differs from these terms or conditions and no such statements or representations shall be recognized or be binding upon Seller. **Any and all provisions of Buyer's purchase order or other documents that add to or differ from these terms and conditions are EXPRESSLY REJECTED.** Notice of objection is hereby given by Seller to any additional or different terms not contained herein. No waiver of these terms and conditions or acceptance of others shall be construed from any failure of the Seller to raise objections. No waiver of and term or condition hereof or any default or Breach by Buyer hereof shall be binding on Seller unless consented to in a writing signed by an officer of Seller. The failure of the Seller to exercise any right(s) under this Contract, upon the Breach or default hereunder by the Buyer or otherwise, shall not be a waiver of the Seller's subsequent ability to exercise such right(s) or any other right. If any court of competent jurisdiction finds that any provision of this Contract (or part of any provision) is void, invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Contract shall not be affected thereby and shall be valid and remain operative and binding on Buyer and Seller. This Contract, the performance thereof, and any dispute, claim or controversy arising from the relationship of the parties to this Contract and shall be governed by and shall be construed and enforced according to the laws of the Commonwealth of Pennsylvania, without giving effect to its conflict of laws principles. Application of the United Nations Convention on Contracts for the Sale of Goods is hereby excluded. The parties hereto expressly agree that if a Court of competent jurisdiction deems any of the language contained herein to be vague or ambiguous such language shall not be preemptively construed against either party but shall be construed so to give effect to the true intention of the parties. Buyer may request changes or add extras. Seller shall only be bound to comply with changes or extras which have been approved by Seller in a change order signed by the Seller and the Buyer or the Buyer's agent, which specifies the change to the specifications for the goods, including any addition or deletion to the goods and the modification to the Total Purchase Price ("Change Order"). Buyer understands and agrees that any changes could result in a change in the Total Purchase Price and a change in the estimated shipping and delivery date. All section, subsection and subpart headings herein are included for reference only and shall not be considered as substantive parts of this Agreement or used in interpreting this Contract. This Contract is personal in nature and is not assignable by Buyer. This Contract shall be binding upon and inure to the benefit of the employees, officers, directors, agents, trustees, beneficiaries, successors and permitted assigns of each of the parties. REV 12-19-14